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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,281	07/10/2001	Michael Conor Minogue	660057-2000	8686
20999	7590	07/02/2004	EXAMINER	
FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			BOCKELMAN, MARK	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/902,281

Applicant(s)

MINOGUE ET AL.

Examiner

Mark W Bockelman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22, 24-45 and 52-54 is/are rejected.
- 7) ☒ Claim(s) 23, 46-51 and 55-64 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1- 22, 24-45, 52-54 are rejected under 35 U.S.C. 102(b) as being anticipated by Linder U.S. Patent No. 5,190,036. Lindsey discloses an attachment means in the form of a belt with a number of markers that is capable of being used in a manner according to applicant's statements of intended use. Linder provides markings 26 and 28 that could theoretically be used for marking the attachment sites of additional electrodes. Applicant does not specify a defined relationship between the markings and various muscle groups. Since the Linder markings are generally close to the recited muscle groups, they can be used to generally locate the electrodes to the specified muscle groups. Additionally, the belt member of Linder would fit different people differently so that a person with a smaller waistline would have the markers extend further around the torso. One of the markers could be used for a reference means. The Linder device is made of elastic cloth (column 2 lines 65+) and has velcro for securing the belt about a person. Neither the velcro nor the contact electrodes 18 would not stretch and thus the

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device has different areas of stretchability. The examiner considers central electrodes 18 to have equivalent attaching means as that claimed. In addition, the electrodes could serve as contact means for other electrodes. With respect to claims 31-45, each of the claims refer to the electrodes of claim 1, however, the electrode statements in claim 1 are an intended use and not part of the positively recited structure. Thus claims 31-45 have been treated as providing structure to the intended use, which does not provide patentable distinctions.

Allowable Subject Matter

Claims 23, 46-51 and 55-64 are objected to

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark W Bockelman whose telephone number is (703)-308-2112. The examiner can normally be reached on Monday - Thursday 10-8:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

June 27, 2004

MWB


MARK BOCKELMAN
PRIMARY EXAMINER